

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WILLIAM D. GARLAND

PLAINTIFF

v.

Civil No. 05-5131

RANDALL DENZER; and
SGT. FOSTER

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

On June 21, 2006, this case was dismissed (Doc. 30). On November 20, 2006, the plaintiff filed a notice of appeal (Doc. 32) and a motion for leave to appeal *in forma pauperis* (Doc. 33). The motion for leave to appeal IFP was referred to the undersigned.

Pursuant to Rule 3(a)(1) of the Federal Rules of Appellate Procedure an appeal may be taken from the district court to the court of appeals by the filing of a notice of appeal with the district court clerk within the time allowed by Rule 4. In civil cases, generally, the notice of appeal “required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.” Fed. R. App. P. 4(a)(1)(A).

Pursuant to 28 U.S.C. § 1915(a)(3) an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. A reasonable person could not suppose this appeal would have some merit. It is clear that plaintiff has missed his deadline for filing an appeal from the underlying order. I therefore recommend that the motion to proceed *in forma pauperis* on appeal be denied. The plaintiff may, of course, file a motion to appeal IFP with the Court of Appeals for the Eighth Circuit.

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 4th day of January 2007.

/s/ J. Marszewski
HON. JAMES R. MARSZEWSKI
UNITED STATES MAGISTRATE JUDGE